

Legal Technical Assistance On Tobacco Control Policy

California Department of Health Services / Tobacco Control Section
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Purpose and Overview of the Monograph

This monograph was prepared in response to the many questions from Tobacco Control Section (TCS) funded projects and from universities and health departments in other states that the Technical Assistance Legal Center (TALC) has received during the last few years about how it provides legal technical assistance. As states develop or expand their tobacco control programs with funds from the Master Settlement Agreement (MSA), some are considering the need for legal advice on local policies.

This publication describes TALC's model and structure and answers typical questions that have been asked about programmatic and organizational issues and work relationships. A list of TALC's printed educational materials—such as model ordinances and fact sheets - appears in the final section of this monograph. The materials can be ordered by phone, mail, or accessed through TALC's website: <http://www.phi.org/talc>.

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The California Tobacco Control Program

California's Tobacco Control Program began in 1989 after the passage of a 1988 ballot initiative called Proposition 99, which added a 25-cent tax to each pack of cigarettes and increased the tax on other tobacco products as well.

The goal of the California Tobacco Control Program is to change the social norms of tobacco use so that it is neither desirable, acceptable, nor accessible. Durable social norm change occurs through shifts in the social environment of local communities. Program interventions facilitate change at the community level.

“A comprehensive approach designed to change social norms is more effective in reducing tobacco use than focusing on individuals who smoke. Change must come from the grass-roots level up, not mandated from the top.” (*A Model for Change: The California Experience in Tobacco Control*, Sacramento, Department of Health Services, 1998.)

California delivers health services and education through a decentralized system of local health departments and community based organizations. Reflecting the importance placed on grass-roots tobacco control efforts, 61 local health departments have established tobacco control programs, and each of these works with a community coalition. Over 100 community-based agencies are also funded to conduct tobacco control programs for the special populations and issues in their communities.

The process of initiating, adopting, and implementing tobacco control policies is one significant way to change the social environment in a community. The Technical Assistance Legal Center was established in late 1997 to provide help to local tobacco control programs, city attorneys, county counsels, and others working on various tobacco-related policies.



Executive Summary

As California-based tobacco control programs move from educating their communities about the dangers of tobacco to advocating for policies that provide lasting community-norm change, the need for technical assistance on legal issues is essential. Legal expertise is vital for preparing sound policy to both support and justify community-level interventions to effectively address the public health threats posed by the use, marketing and manufacture of tobacco products.

In California, this assistance has been available since 1997 from the Technical Assistance Legal Center (TALC). Funded by the California Department of Health Services, Tobacco Control Section (CDHS/TCS), TALC is a resource for California communities that want to change their social environment through the adoption of local policies to reduce the availability of tobacco products, protect the public from exposure to secondhand smoke and to minimize the visibility of tobacco advertising in communities. Strategies include restricting tobacco-only stores, changing the way tobacco products are sold, licensing tobacco retailers, educating about unfair business practices to encourage compliance with secondhand smoke and other tobacco control policies, divesting from publicly-held tobacco stock, and other policy measures. TALC conducts legal research; develops practical tools for use by advocates, policymakers, and municipal attorneys; and provides technical assistance on these issues.

This monograph was prepared in response to the many questions TALC has received during the last several years from other states and multi-state regions that are considering how to provide legal advice as tobacco control policies are developed. This publication answers typical questions that are asked about TALC's model, structure, and philosophy.



Introduction

Communities are besieged with images portraying tobacco use as glamorous, exciting, and fun. While California has strong controls against smoking in work places, restaurants, bars, and other public places, tobacco control advocates work in many areas of the social environment that are still in need of a public policy response to prevent the negative health effects of tobacco use.

For example, discount tobacco retailers proliferate, tobacco companies sponsor family and other public events, illegal tobacco sales to minors continue, and enforcement of existing policies is sporadic. Communities need legal technical assistance to respond to these public health problems in the social environment. In California, this assistance is available from the Technical Assistance Legal Center (TALC).

Overview of TALC

TALC is a statewide project supported by CDHS/TCS, with funding from the Tobacco Tax and Health Protection Act of 1987 (Proposition 99). TALC has provided legal technical assistance since February 1998 to California cities and counties that have questions relating to tobacco control policies and strategies. TALC conducts legal research, develops print resources—including model ordinances—that are appropriate for both lay and legal audiences, and provides technical

assistance on legal strategies to reduce tobacco use. Current strategies include preventing tobacco sponsorship and promotion; limiting youth access to tobacco; regulating tobacco retailers; expanding secondhand smoke protections; enforcing the Master Settlement Agreement (MSA); developing land use policies; and assisting public funds and university endowments to divest their tobacco holdings.

TALC professional staff have legal, public health, and municipal government expertise. They provide assistance to a variety of community stakeholders throughout California: local health department tobacco control projects, city attorneys, county counsels, elected officials, and community-based organizations.



Project Philosophy

TALC believes effective legal technical assistance requires expertise on legal and public health matters, a consensus of academic and practical perspectives, and a balance of grassroots activism and legal objectivity. These are critical for a project whose products must be credible and defensible to the legal community and at the same time practical and meaningful to those in the community who advocate for and implement tobacco control policies.

TALC's three-component structure—staff, legal team, community advisory board—and the backgrounds of the individuals in those components ensure that these perspectives are always considered.

Project Organization

As a project funded by the CDHS/TCS, TALC is part of a long-term statewide strategy to change the social norms around tobacco use—to reduce tobacco consumption by empowering a grass roots movement and to make tobacco use less acceptable, less accessible, and less desirable.

New legal technical assistance centers must analyze how their state's tobacco control infrastructure is organized, and be prepared and available to work with it. California has a comprehensive tobacco control program, which funds and closely coordinates with county and city health departments, state-wide agencies and community-based organizations. Therefore, the TALC Advisory Board includes

representatives of counties, cities, voluntary health agencies, ethnic networks, and other community-based and state-wide organizations.

If a project is housed in a law school, it is critical to assure that there is a relationship with the community and the project is not seen as solely academic. Hiring staff with community-based commitment and experience may be especially important for a law school-affiliated project.

Staff and Consultant Qualifications

TALC legal staff are lawyers with vast experience in public health, policy development, and municipal government. Evaluation of TALC's activities consistently demonstrates that staff with such collective expertise are highly effective in helping the legal, public health, and advocacy communities understand one another's language, concepts, constraints, and priorities so that they can work together toward common goals. Although it can be difficult for

TALC Vision Statement

The vision of the Technical Assistance Legal Center (TALC) is to reduce the health damage caused by the tobacco industry by:

- Serving as a legal resource that community groups, municipal attorneys, and elected officials utilize when developing tobacco control policies;
- Working with local, state, and national networks of attorneys involved in tobacco control to create strong, defensible policies; and
- Serving as a model for and sharing information with other public health programs providing legal technical assistance throughout the country and internationally.

We never say, “You should pass this law” or “You should not pass this law.” We say, “You decide what you want to do. If you want to move forward on this issue, we’ll help you create the most legally defensible way to do it.”

—*TALC Legal Staff*

a new project to find people with this combined expertise, such staff contribute significantly to the project’s credibility and effectiveness. TALC also found that a core group of legal experts on their Legal Team, led by a few high-visibility individuals, can provide valuable expertise on specific issues such as the impact of the First Amendment on tobacco advertising controls, federal and state preemption, and local government authority. The Legal Team model facilitates the development of expertise of program attorneys in complex legal issues that may be new to them as they can consult with Legal Team members who have in-depth subject matter expertise. New projects might begin by searching the professional literature for law professors who are “friendly” to tobacco control issues and have a wide network of colleagues, to form the nucleus of a legal team.

Budgeting

TALC’s current annual budget of approximately \$500,000 has been appropriate for a state as large as California. States with smaller populations could form regional programs to make efficient use of smaller tobacco control budgets. However, multi-state regional programs must be sure to involve attorneys who are licensed in each participating state and who know the state laws that are applicable to the project’s work.

For states with smaller budgets, the essential budget items include an *experienced* full-time lead attorney; expert legal consultants on specific topics (do not count on *pro bono* legal services); an administrative assistant (at least half-time); a subscription to a searchable legal database; materials production (either print or web-based); web development and maintenance; program evaluation; and operating expenses such as rent, travel, graphic arts and printing, supplies, and equipment.

Legal Issues

TALC works on legal issues that are nearly always generated by the community. Most communities have a tobacco control issue that is compelling to them. In many states, controlling secondhand smoke has galvanized community attention. Secondhand smoke issues also have complex legal ramifications such as state preemption, private property rights, nuisance law, etc. In addition, many states are interested in filling the tobacco control gaps left by the Master Settlement Agreement (MSA).

It is productive for a new legal assistance project to focus on one or two issues that are compelling to the community in the first year of operation. The start-up work to develop legal materials on even one issue is slow, and if staff are spread too thin on multiple issues, there may

be little sense of accomplishment or progress. It is sometimes necessary to limit a project's objectives to the most pressing issues first and to defer work on other legal questions until a later time.

Despite recommending a start-up phase that is limited in scope, TALC also has found it to be important to have the flexibility to shift legal strategies to combat new industry initiatives. Land-use restrictions for cigarette-only stores, for example, is a new legal tool that uses broad government authority to control the location and number of tobacco retailers in a community. In addition, post-MSA product promotions require new legal strategies to protect youth and young adults from new tobacco sponsorship and promotional campaigns.

Political Considerations

TALC receives a grant from the CDHS/TCS to provide legal technical assistance to the state's tobacco control community (i.e., local health departments, community-based organizations, ethnic network projects, and other state and local projects).

TALC does not provide legal advice to the state health department on tobacco issues.

The department has its own in-house counsel.

In addition, TALC does not view the provision of legal technical assistance as an advocacy function in the

traditional sense. Although TALC is supported by tobacco control funds and its mission is to assist tobacco control advocates, its legal assistance is intended to provide factual legal analyses of tobacco control strategies and policies. For example, TALC would never tell advocates or municipal legislators that they *should* advocate for or pass a particular policy. Instead, TALC listens to the policy strategies the advocates and elected officials want to promote and assists them in developing the strongest and most defensible policy possible to achieve their goals.

TALC's mission statement is worded to capture this objectivity: "The mission of the Technical Assistance Legal Center (TALC) is to change social norms about tobacco by developing cutting-edge policies in California and by working with our partners to guide local policy activities to reduce the health damage caused by the tobacco industry. ..."

"I live or die on good information—TALC provides reliable, well-documented information that policymakers can trust and advocates can understand. It doesn't come off as biased. New projects should resist the temptation to create a legal defense unit in favor of a legal technical assistance model."

*—Vice-President for Governmental Relations,
American Lung Association of California*

This objectivity is valued by the attorneys, advocates, and public health educators who receive legal technical assistance from TALC, and it contributes to their sense of trust in the information they receive.

TALC also has resisted the temptation to create a legal defense unit in favor of a legal technical assistance model. In other words, TALC's approach is to *prevent* litigation through the development of well-researched model policies that

are well grounded in established law. TALC has put relatively little emphasis on litigation or legal defense because well-drafted policies largely have avoided legal challenges. When litigation has occurred—either at the federal level or on the nontobacco-related ordinances that have the potential to influence the legality of local tobacco control policies—TALC has consulted with litigating attorneys and written *amicus* (friend of the court) briefs when deemed appropriate.



TALC Mission Statement

TALC's mission is to change social norms about tobacco by developing cutting-edge policies in California and by working with our partners to guide local policy activities to reduce the health damage caused by the tobacco industry. We accomplish this mission by partnering with a legal team of academics and practitioners, as well as a community advisory board of tobacco control advocates, to ensure that policies are legally defensible, flexible, understandable, and responsive to community needs. TALC demonstrates national leadership by providing a model for other states and localities.

The TALC Model: Integrating Dual Perspectives

The statement that best captures the challenge to and success of TALC comes from its Project Director: "We must present legal information in a manner that is understandable and credible to all of our target groups—lawyers and non-lawyers." Over the four years of its life, TALC has provided technical assistance to health departments, community groups, city attorneys and county counsel, the California Attorney General's staff, and elected officials in all regions of California. TALC was carefully designed with these distinct audiences in mind. TALC's combination of staff, legal team, and community advisory board ensure that all these unique perspectives are considered. Further, TALC is housed in a nonprofit organization with longstanding and close ties to both public health professionals and community-based organizations.

The Need for Objectivity

Legal advice is most effective if it comes from a credible source, and TALC works hard to remain an objective technical resource for tobacco control advocates. TALC focuses on providing factual legal information and analysis of legal strategies. It does not engage in lobbying or provide testimony at public hearings. Attorneys, advocates, and public health educators in evaluation interviews have noted legal objectivity as a strength of the program.

Essential Elements of Effective Legal Technical Assistance

Beyond measuring endpoints such as the number of policies that are enacted, TALC emphasizes education and empowerment of the tobacco control community. TALC responds to approximately 750 requests for assistance a year. During a recent six-month period, TALC provided assistance in eight different legal

areas: advertising, divestment, land use restrictions, tobacco retailer licensing, secondhand tobacco smoke, the MSA, self-service tobacco displays, and miscellaneous questions related to tobacco control.

One goal of legal technical assistance should be to increase the capacity of legal, public health, and community-based clients to communicate and work together effectively. For example, TALC legal staff can enhance collaboration between a health department representative, a city attorney, and a member of a community coalition by facilitating discussions in which all priorities and concerns are expressed, and where a strategy is developed that makes sense to and satisfies all participants. In this process, in which all are working toward a mutual goal of community tobacco control, the public health representative can explain to the city attorney the need for a policy, the city attorney can explain political or legal restraints to certain approaches, and the community member can describe the ways the policy will help the community members. Each person broadens his or her technical knowledge and understanding and potentially makes new allies for future initiatives.

Such collaborative learning can be reflected in the structure of a legal technical assistance project. For example, on TALC's Legal Team and Advisory Board, the public health educators and advocates learned how

to employ legal strategies, the legal scholars learned about the practical issues of city government or public health, and practicing attorneys learned about the determination that drives people to work in tobacco control.

Other essential elements of successful legal technical assistance in a community-driven tobacco control program are:

- Communicating with diverse populations, including legal, public health, and community advocacy audiences, to interpret and share the priorities and messages of each audience and to facilitate communication among them;
- Adopting legal strategies to stay ahead of the curve in combating new tobacco industry initiatives;
- Hiring staff and consultants who provide prompt response to requests for technical assistance, including reviewing and critiquing local draft ordinances and strategies; and
- Producing legal information that is credible and useful to attorneys and public health advocates.

One outcome of legal technical assistance is usually an increased number of tobacco control policies. When TALC was created in 1998 fewer than 100 California communities had tobacco control policies in place to restrict tobacco advertising, regulate tobacco retailers (through licensing or land use), ban self-service displays, or divest from tobacco companies. In mid-2001, the number of such policies passed in California doubled to approximately 200. TALC has provided technical assistance on legal issues to most of these communities.

“What’s so successful about TALC is that they speak multiple languages—they’re not just people with legal experience and credentials. They understand the public health tobacco control environment and can convey legal principles and underpinnings in language that’s understandable to the field.”

*—Program Consultant, Tobacco Control Section,
California Department of Health Services*

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Most Frequent Questions about TALC

Many states are developing or expanding their tobacco control programs, some with budgets resulting from the MSA signed between state Attorneys General and the tobacco industry in November 1998. As awareness of TALC has reached beyond California, these states have begun to ask TALC for advice on planning and implementing their own legal assistance center for their state's tobacco control program. This section provides responses to those questions.

“Community-based organizations see the City Attorney’s office as pushing recommendations for business, and they don’t trust us. TALC’s attorney met with all of us and was neutral. She backed up the City Attorney and expressed legitimate concerns without obstructing the process. The nonconfrontational environment that TALC helped establish might carry over to other contexts and meetings.”

—City Attorney, Southern California

Programmatic Issues

Why is it important to have legal resources in the tobacco control movement?

Most people think about lawyers only in the context of courtrooms and lawsuits. The theoretical base of California’s Tobacco Control Program is social norm change, in which tobacco control policies play a key role. Access to legal resources is essential at many points of policy development, such as writing policies that are legally possible and defensible, strategizing about enforcement of existing laws, and ultimately preventing lawsuits that drain credibility, dollars, energy, and momentum from the tobacco control movement.

Furthermore, most local government attorneys do not have the time or resources to develop expertise in many of the legal issues that pertain to tobacco control strategies. Providing a clearinghouse of legal research on targeted policy strategies relieves government attorneys of needing to conduct burdensome new

research and analysis. One of the valuable resources TALC provides is model ordinances on a variety of topics. Because legal scholars and municipal lawyers on TALC’s Legal Team validate TALC’s research, a local government attorney can have confidence that these model ordinances not only promote protection of the community but also ensure legally sound policy-making.

How do you decide which legal issues to tackle?

TALC works on legal issues that nearly always are generated by the community, based on current community needs. TALC’s first mandate from CDHS/TCS was to work on advertising, as this was the issue identified by the tobacco control community as most pressing to the success of their policy development efforts. In other states, the most compelling issue is often secondhand smoke. While most of California’s secondhand smoke policy was enacted prior to TALC’s creation, 35 percent of TALC’s technical assistance requests pertain to

expanding and/or enforcing secondhand smoke laws in the state.

TALC also responds to particular events or trends. Recently, divestment of publicly held tobacco stocks was initiated by the State Treasurer and TALC provided legal technical assistance on this issue to community organizers including the CDHS/TCS-funded Council for Responsible Public Investment. Another policy strategy, land use restrictions, evolved from one neighborhood's successful attempt to close down a discount cigarette store that had opened next to a public library and near an elementary school.

TALC focuses on issues that are compatible with those identified by key opinion leaders in California and with the priority areas identified by CDHS/TCS. Over time, TALC has developed experience in outdoor and in-store tobacco advertising, tobacco retailer licensing, self-service tobacco display bans, tobacco event sponsorship, smoke-free bars, compliance with laws against the sale of tobacco to minors, indoor and outdoor smoke-free policies.

Do you prioritize one or two legal issues or try to devote legal resources to multiple issues?

In TALC's experience, it is more productive to focus on one or two compelling issues in the first year of a project. There can be a lengthy start-up time associated with even one

issue, and if staff is spread too thin on multiple issues, there may not be a sense of accomplishment or progress.

During its third year, TALC received requests for technical assistance on so many different legal issues that staff developed a system for deciding when and whether to take on new topics. TALC uses the following process to determine where it should devote its legal resources:

- Conduct an analysis of who else in the tobacco control community might be working on the issue to avoid duplication;
- Focus on policy areas where a legal issue is associated with significant community-based activities;
- Consider the urgency of the technical assistance request and decide whether it is an issue that can be placed on hold until later;
- Consider available resources such as staff time and budget; and
- Consider other groups that are doing similar work with which you can collaborate.

Do you litigate?

To date there have been no lawsuits challenging local tobacco control ordinances based on TALC's model ordinances and/or developed in consultation with TALC, so there has been no need to provide litigation

“Once you hang out your shingle, there will be lots of other questions that bubble up that people didn't articulate until they knew a warm body was there to be a resource. We started getting into retail licensing early on because some of the more savvy organizers were looking at that issue. For the most part, that's how all our projects have started.”

—TALC Project Director

“You can expand your resources by collaborating with another group that has expertise in an issue and ties with people in the community who are working on it. The Center for Responsible Public Investment helps communities to organize and advocate for policies such as public divestment, and TALC works with us on the legal ramifications of divestment policy.”

—TALC Collaborator and Client

“Assess what your state’s tobacco control landscape is and how it fits into the national perspective. Then collaborate with other local, state, and national organizations—figure out how to work together, and you can provide tag-team technical assistance.”

—Co-Director, Americans for Nonsmokers’ Rights

support to local cities or counties. However, TALC frequently gives consultation on the law by providing information on litigation in other jurisdictions. If litigation were to occur in California, TALC is prepared to give litigation support in the form of case finding and analysis and having members of the Legal Team consult with a local government. TALC would not serve as named counsel on a brief or provide primary litigation defense. The city or county would assume those responsibilities in defense of their ordinance. In the spring of 2001, when the U.S. Supreme Court heard *Lorillard Tobacco Co. v. Reilly* challenging Massachusetts’s regulations that limit tobacco advertising near schools and playgrounds, TALC assisted California cities in writing *amicus curiae* (friend of the court) briefs to support the Massachusetts Attorney General in this case. TALC consulted with the attorneys writing the briefs to help them develop legal arguments, integrated public health statistics in briefs, reviewed draft briefs, and coordinated the communication among more than a dozen attorneys.

Do you lobby?

TALC is prohibited from lobbying by the terms of its grant from CDHS/TCS. However, legal staff frequently educate legislators and local elected officials about the status of the law and the status of what communities have done on a particular issue.

How do you educate or train constituencies?

TALC educates public health and community advocates on legal issues through its materials—fact sheets, updates, model ordinances, and newsletters—that are mailed on a regular basis to all members of the state’s tobacco control network.

TALC employs a “train the trainers” approach to educate community advocates by conducting workshops, presenting at conferences, and working one-on-one with advocates. Members of the Legal Team prepare TALC staff on the legal background and preferred arguments for a specific tobacco control policy issue. TALC, in turn, provides training that combines legal and public health concerns to community leaders, who then educate their constituents as the issues relate to specific community issues. As a TALC attorney says, “The attorneys stay in the background and empower the tobacco control community with the legal tools necessary to formulate tobacco control policies.”

TALC also communicates with public officials via written and oral presentations. Public officials on TALC’s Advisory Board informally educate their peers, and presentations have been made to officials through the statewide League of California Cities. Every elected official in the state receives TALC’s semiannual newsletter, and many officials have participated in TALC’s statewide

conferences that also include public health professionals and municipal attorneys. The conferences are an ideal venue for all segments of a community to gain legal information and community-organizing strategies applicable to their immediate concerns.

Finally, TALC staff participates in various statewide workgroups that develop direction for specific tobacco control issues, such as point-of-sale tobacco advertising, licensing tobacco retailers, monitoring the promotion of tobacco products after the MSA, etc. This is another way for advocates and attorneys to work together on tobacco control policy strategies to ensure the community organizing and legal strategies are coordinated and in sync.

Are TALC materials available?

All of TALC's printed resources are available to other states. These are listed at the end of this monograph and are available by phone, or mail, or on TALC's website (www.phi.org/talc). While some of TALC's resources are California-specific, the resources can be adapted to fit local case law and code citations in other states.

Organizational Issues: Staffing

How large is your staff, and what are their responsibilities?

TALC has a 30 percent Project Director and a full-time Legal Director, Staff Attorney, Program Administrator, and Administrative Assistant, for a total of 4.3 full-time employees. It is possible that more legal staff will be added in the near future to handle increased requests for legal services.

Each of the legal staff specializes in a particular topic or topics. This specialization streamlines the referral process as requests come in and each staff person has the time to learn the legal complexities of a limited number of issues.

The Project Director is responsible for project management, the budget, and the quality of all project activities. The Project Director also works with tobacco control attorneys nationwide to share resources and strategies and assists other states in initiating legal technical assistance services. The Legal Director and Staff Attorney provide the day-to-day interaction with TALC constituencies. They relate directly to the Legal Team and are responsible for developing model policies and other resource materials for use by tobacco control advocates and local government. The Program Administrator coordinates the budget and special projects such as TALC's newsletter and other publications, advisory board meetings, and

conferences. The Administrative Assistant maintains TALC's website, develops and maintains databases, and manages the office.

What is the legal staff's training and background?

TALC's professional staff possess legal credentials and expertise and public health and/or municipal government experience. The Project Director has degrees in both law and public health and formerly was a Director of Health Education in a county health department. The Legal Director has a law degree and work experience in public health and local government. The Staff Attorney served in a judicial clerkship and as a litigator before joining TALC. It can be difficult for a new project to find people with this combined expertise, but it has been the backbone of TALC's success.

The expertise in both law and public health is critical for a project whose products must be credible and defensible to the legal community, and practical and meaningful to tobacco control advocates. Evaluation of TALC's activities consistently demonstrates that staff is highly effective in helping the legal and public health/advocacy communities to understand each other's language, constraints, and priorities so that both can work together toward a common goal.

How did you create your Legal

Team, and what do they do?

The Legal Team was created to provide immediate expertise on the complex legal issues regarding tobacco advertising controls. Because TALC offers legal technical assistance to various audiences, including municipal attorneys, public health professionals, and community advocates, the Legal Team is comprised of both legal scholars and practicing attorneys. The academic members are professors at the University of California, Berkeley, Boalt Hall School of Law. Private practitioners are affiliated with private law firms specializing in California municipal law. Academics are teamed with practitioners, so that substantive understanding of areas of law is matched with the practical knowledge of how cities regulate and administer to protect public health and welfare. Incentives for law firms to participate come from visibility on TALC publications and letterhead.

The Chair of the Legal Team is a law professor with strong academic credentials in tobacco control. He was involved in designing TALC and has recommended and recruited other academics as well as practicing attorneys who now comprise the core of the Legal Team. New projects might look for an appropriate person in their state by contacting deans or professors at local law schools, searching the published literature for law professors who are "friendly" to tobacco control issues, and using

recommendations from municipal attorneys.

Legal Team members have written or contributed to TALC's resources and, at the request of TALC, occasionally they critique a specific ordinance or discuss concerns with a city attorney. Their expertise has been provided on issues of the First Amendment, federal and state preemption, and local government authority. When work began on divestment of government-held tobacco stocks, experts in pension fund design and administration joined the Legal Team. As new topics emerge, the Legal Team either evolves its membership to reflect the new legal challenges or existing members with broad knowledge and skills consult on new areas of law.

In addition, Legal Team members link staff attorneys with the municipal law infrastructure in California, thereby facilitating staff's connection to important professional networks. Reliance on a Legal Team decreases as program attorneys gain knowledge and experience in a subject area.

What is the role of your advisory board?

TALC has an Advisory Board whose members represent the target audiences for TALC services: local public health departments, community-based organizations, statewide tobacco control advocates, municipal attorneys, local elected

officials, and other projects funded by CDHS/TCS.

The Advisory Board plays a crucial role in ensuring that TALC is responsive to communities' tobacco control needs. Members keep TALC updated on local trends, controversies, and challenges from the tobacco industry. They strategize on decisions regarding new areas of assistance, serve as a sounding board for the usefulness of potential strategies, and provide entrée to local community coalitions and municipal networks and organizations.

Because Advisory Board members represent a variety of perspectives, they learn new strategies and tools from one another in the same way that academic and practicing attorneys on the Legal Team learn from one another. It is another example of TALC's "train the trainer" model of technical assistance.

Organization Affiliation

Where should we house legal resources?

There are two primary options for housing a legal technical assistance project: a law school or a nonprofit organization. If the project is housed in a law school, it is vital to assure that there is a relationship with the community and the project is not seen as solely academic. Hiring staff with community-based experience and commitment is especially important for a law school-affiliated project. Working within these

“TALC gave an update on national litigation and what the issues are in getting a valid ordinance passed. The presentation showed us and the community-based organizations why they can’t get everything they want in the ordinance and it gave me a chance to address my concerns. It helped to have TALC there because TALC is legitimate in the community’s eyes, and we were using TALC’s model ordinance. Often CBOs are at odds with the city on, for example, conditional use permits. TALC backed me up.”

—City Attorney, Southern California

guidelines, very powerful programs can be based at law schools. Since the legal issues involved in tobacco control are complex and varied, they provide excellent learning opportunities for law students. Not only can a law school provide excellent legal resources to the tobacco control movement, it can also train future attorneys on how best to work with community-based organizations to protect community health and safety.

TALC is housed in the Public Health Institute (PHI), a nonprofit organization devoted to public health research, policy, and community development. Being affiliated with a nonacademic institution also reinforces the integration of legal and public health perspectives that TALC strives to project. This affiliation gives the project links to others in the public health and nonprofit networks and results in some cost savings when space, equipment, and publications are shared with other PHI projects. Overhead costs are also lower in a nonprofit organization than in most academic institutions, and administrative services such as payroll and personnel are available.

Work Relationships

What is your relationship with the state health department?

CDHS/TCS provides the funding for TALC through Proposition 99 tobacco-tax revenues. TALC is a grantee that provides legal technical assistance to the state’s tobacco

control community infrastructure (e.g., local health departments, community-based organizations, ethnic network projects, and other state and local projects). *It does not provide legal advice to the state health department on tobacco issues.* The department uses its own in-house counsel.

TALC also is part of California’s long-term statewide plan to reduce tobacco use by empowering grassroots activists. Since 1989, CDHS/TCS has accrued experience and wisdom about what does and does not work in tobacco control, and it has created a sophisticated system of interlocking state and local program strategies and initiatives that work toward the same goals in predetermined priority areas. These are:

- Counter Pro-tobacco Influences;
 - Reduce Exposure to Secondhand Smoke;
 - Reduce the Availability of Tobacco; and
 - Provide Cessation Services
- TALC’s philosophy of community norm change and its priority issues are tightly related to those of the State.

The key for other states is to analyze how their public infrastructure is organized and be prepared and available to relate to that infrastructure. California has a comprehensive program and that has affected the design of TALC’s Advisory Board, which includes

representatives of counties, cities, voluntary health agencies, and community-based organizations. Other states might work only with state-level voluntary agencies.

What is your relationship with city attorneys and county counsels?

There are over 450 city attorneys and counsels in 58 counties in California. Building relationships with networks of this size can be slow. It took about three years for these municipal attorneys to learn about TALC and utilize TALC's services, and education is ongoing.

Municipal attorneys were informed about TALC in several important ways: initial contacts from attorneys on TALC's Legal Team and Advisory Board; an announcement of TALC services ("if someone in your community is interested in a tobacco issue, call on us"); direct mailings of TALC's legal guides and other print materials; presentations at meetings and conferences; and individual contacts in the course of ordinance development in a city or county.

City attorneys and county counsels were interviewed to evaluate TALC's service to them. They cited the ability of TALC's staff to speak the language of city attorneys and county counsels and the credentials of the Legal Team as factors that contribute strongly to the current positive relationship of TALC with these networks.

What is your relationship with the Attorney General, and the enforcement of the Master Settlement Agreement?

California is different from many other states in having eight attorneys in its Attorney General's office working on MSA enforcement. They aggressively monitor tobacco industry activities, negotiate with corporate counsel, and file lawsuits. TALC works actively with the Attorney General's office to monitor tobacco company community activities for possible violations of MSA sponsorship restrictions.

A common misperception of communities is that there is no longer a need for local policies because the MSA covers everything. TALC has prepared an analysis of the areas not covered by the MSA on which communities can still work (see the Appendix for a copy of this analysis). For example, the MSA does not address smoke-free restaurants or bars. Although California has a smoke-free restaurant and bar law, this is an important issue for states without similar state laws or local policies.

Another way in which TALC works cooperatively with the Attorney General's office is by facilitating communication between that office and community-based organizations and public health departments. TALC provides a link to community organizations, interprets legal language for these organizations, and

It's helpful to start a Legal Team with someone who is well connected in the state and can create a core of high-visibility people who then attract others. This team then provides high credibility for the project.

—Chair, TALC Legal Team

You can find appropriate practitioners by going to a law firm whose regular clients include cities and counties, or specialty firms like those who work on land use, pension funds, and so on.

—Legal Team Practitioner

The pairing of academics with practitioners is really well designed, because these experts think differently. The academics usually take the lead, and the practitioners review what they produce. For example, when we were dealing with federal preemption of tobacco advertising regulations, the academics produced a legal doctrine, and then we told them that cities already deal with signs and other sorts of advertising controls. Every municipality does it differently, so the legal doctrine was developed broadly enough to be applicable statewide.

—Legal Team Practitioner

I've learned a lot about the scientific aspects of tobacco control from working with TALC. I am a city attorney and my role is to give a legal perspective to assist with policy development. I must remain nonpartisan and nonpolitical. I can't advocate, yet I interact with those who are passionate about their issues. I've gained a more thorough understanding and appreciation for the role of the activist.

—TALC Advisory Board Member

carries community priorities back to the Attorney General's office. In addition, TALC has joined with the Attorney General's office and tobacco control advocates to monitor post-MSA industry behavior. Local volunteers have been trained to observe and collect evidence and identify violations at industry-sponsored events (like rodeos, car races, community fairs, etc.).

Budget

What is your annual budget? How is it organized?

In its first year, TALC had one full-time attorney and one administrative support staff; its annual budget was approximately \$220,000. This is probably a realistic and sufficient budget to provide legal technical assistance in most states. Because of California's size and complex tobacco control network, in its third year of operation TALC's annual budget grew to approximately \$500,000. Costs are organized into staff time, consultant time (including the Legal Team), travel, publications and databases, web development and maintenance, materials development, evaluation, general operating expenses, and indirect costs. Following are some recommendations about the various budget components:

Staff and Consultants

- Hire one or more experienced full-time attorneys. TALC's salary rates are based on municipal attorneys' salary guidelines.

- Contract with attorneys to serve on a Legal Team. TALC has flat-fee contracts for developing legal guides and updates.

- Establish a fee-for-service (hourly billing) arrangement with one or more outside attorneys who provide legal opinions or advice to staff on an as-needed basis.

Travel

Secure a sufficient travel budget to provide training sessions and attend meetings throughout the state.

Publications and Databases

Subscribe to *Mealey's Tobacco Report* and WestLaw or Lexis (internet legal databases on state and federal cases, with a national search function).

Web Development and Maintenance

Develop and maintain a website to provide all resources and legal updates on-line.

Materials Development

Design and print legal resources and updates (e.g., legal guides, fact sheets, model policies, newsletters, etc.)

Evaluation

Reserve a portion of the total budget for an evaluation consultant and staff time to coordinate evaluation tasks. Process and outcome evaluations are necessary to justify the need for a tobacco control legal technical

assistance project. TALC devotes 5 percent of its budget to evaluation activities. TALC evaluates its efforts in several ways including random surveys of service recipients, soundness of developed policies (in that they withstand legal challenge) and the number of policies that are adopted at the local level that TALC has had a role in developing.

General Operating Expenses

Plan sufficient funds for rent, utilities, office supplies, postage, printing, furniture, equipment, and all the other costs associated with effective programming.

Indirect Costs

Allow for appropriate indirect costs to be allocated to the academic or nonprofit institution housing the project.

Can we do this kind of project with a smaller budget?

TALC's budget is appropriate for a state as large as California. States with small populations could form regional/multi-state programs to make efficient use of smaller budgets. However, regional programs must be sure to have an attorney licensed to practice in each participating state who also knows specific state laws that are applicable to the project's work. The essential budget items described above apply to states with smaller budgets as well as larger.

The Legal Team is worth every single penny spent for it. There's extreme pressure on TALC to be right—information has to be thoroughly researched, well thought out, able to stand up to legal challenges. You need a legal team for that—community project staff can't do it alone. And, so far, nothing they've helped on has been struck down.

—Program Consultant, Tobacco Control Section,
California Department of Health Services

Conclusion

There are suggestions throughout this monograph for new technical assistance legal centers to consider in their early planning stages. These tips are based on TALC's experience and include issues of project philosophy, organization, staff and consultant qualifications, budgeting, and content of technical assistance.

Many configurations and models for providing legal technical assistance are possible. Some projects may choose to defend tobacco control ordinances that are challenged, represent individuals in suits against the tobacco industry, or provide litigation support. TALC's focus is policy oriented because that is a priority of the state's Tobacco Control Program and fits with its strategy of changing social norms around tobacco use. Each new center will find its own focus as it relates to its state's public infrastructure and philosophy about tobacco control.

Appendix

Master Settlement Agreement (MSA) between Attorneys General and the Tobacco Industry (11/98)

Overview of Key Public Health Restrictions

Provision

What is Prohibited?

What is Allowed?

No Youth Targeting

Prohibits tobacco marketing for which the “primary purpose” is to initiate, maintain, or increase youth smoking.

Marketing for which the incidental purpose is youth targeting could conceivably be allowed.

Ban on Cartoon Characters

Bans use of cartoons in tobacco advertising.

Existing advertising content, claims, or slogans other than cartoons are allowed to continue.

Outdoor Advertising

Prohibits outdoor advertising—billboards, signs, and placards in arenas, stadiums, shopping malls and video game arcades, and any other ads that are outdoors or on the surface of a window facing outward.

Does not prohibit:

1. ads that are less than 14 square feet and are either outside a tobacco retail store or on a window facing outward;
2. ads inside a tobacco retail store;
3. ads located inside an adult-only facility;
4. ads outside an adult-only facility advertising an event with a brand name, no more than 14 days before the event;
5. billboards advertising the brand name—sponsored event at the site of the event for 100 days; and
6. ads outside a tobacco manufacturing facility.

Transit Ads

Prohibits transit ads—ads on or within private or public vehicles and placed at, on, or within a bus stop, taxi stand, transportation waiting area, train station, airport, or similar location.

Does not apply to ads outside an adult-only facility advertising an event with a brand name, no more than 14 days before the event. For example, would seem to allow vehicles like the Marlboro Van to be parked outside Marlboro-sponsored events.

Provision	What is Prohibited?	What is Allowed?
<p>Brand Sponsorship Restrictions</p> <p>Prohibits brand name sponsorship of:</p> <ol style="list-style-type: none"> 1. Concerts; 2. Events in which the intended audience is comprised of a “significant percentage of youth” (“significant percentage” is not defined); 3. Events in which paid participants or contestants are youth; and 4. Football, basketball, soccer, baseball, or hockey games. <p>Prohibits naming a stadium or arena with a brand name.</p> <p>Prohibits tobacco companies from paying football, basketball, soccer, baseball, or hockey leagues in exchange for use of a brand name.</p>	<p>Prohibits brand name sponsorship of:</p> <ol style="list-style-type: none"> 1. Concerts; 2. Events in which the intended audience is comprised of a “significant percentage of youth” (“significant percentage” is not defined); 3. Events in which paid participants or contestants are youth; and 4. Football, basketball, soccer, baseball, or hockey games. <p>Prohibits naming a stadium or arena with a brand name.</p> <p>Prohibits tobacco companies from paying football, basketball, soccer, baseball, or hockey leagues in exchange for use of a brand name.</p>	<p>Allows one brand name sponsorship for each tobacco company within any 12-month period. A national or multistate series or tour (e.g., NASCAR) will count as one brand name sponsorship. For example, Winston can sponsor the Winston Cup. Also allows sponsorship of a participant or team in the sponsored event (e.g., a car at the Winston Cup).</p> <p>The brand name sponsorship restrictions do not apply to events in “adult-only” facilities—a facility or restricted area (open-air or enclosed) where the operator ensures or has a reasonable basis to believe that no underage person is present.</p> <p>Brown & Williamson may continue to sponsor the GPC country music festival or the Kool Jazz Festival, despite the prohibition on sponsorship of concerts.</p> <p>Allows sponsorship of other sports not expressly prohibited, e.g., horse racing, auto racing.</p> <p>Corporate name sponsorship is still allowed.</p> <p>Allows vehicles bearing a brand name outside the brand-sponsored event, e.g., the Marlboro van at a Marlboro-sponsored event.</p> <p>Allows billboards advertising the brand name–sponsored event at the site of the event for 100 days.</p> <p>Brand merchandise may be distributed and sold at the brand name sponsorship event.</p>

<p>Product Placement</p>	<p>Prohibits payments by tobacco companies for product placement in the movies, tv, video games, or other performances.</p>	<p>Does not apply to media shown in an adult-only facility or not intended for distribution to the public (the latter provision is undefined but could mean internal training videos, for example).</p>
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Provision

What is Prohibited?

What is Allowed?

Brand Name Merchandise

Prohibits sale or distribution of apparel or other merchandise advertising tobacco products.

Licensing agreements and contracts existing as of June 20, 1997, are exempt. However, such contracts may not be renewed.

Does not apply to apparel or other merchandise distributed or sold at the site of a brand name sponsorship. For example, a Winston Cup t-shirt could be sold at the Winston Cup.

Allows already distributed merchandise to remain.

Free Samples

Prohibits distribution of free samples of tobacco products except in an adult-only facility.

Does not prohibit the distribution of free samples in an adult-only facility.

Excludes tobacco products provided in exchange for proof of purchase, such as in a 2-for-1 offer.

Proof of Purchase Gifts

Proof of age is required for any item exchanged for proofs of purchase of tobacco products.

A photocopy of a driver's license or government-issued identification qualifies as sufficient proof of age.

Limitation on Third Party Use of Brand Names

Prohibits tobacco companies from licensing or authorizing a third party to use a brand name in any manner prohibited by the agreement (e.g., on a billboard).

Does not require tobacco companies to terminate any licensing agreements in existence as of July 1, 1998.

Third party use of brand names is allowed at the site of a brand name sponsorship permitted by this agreement.

Minimum Pack Size

Requires a minimum pack size of 20 cigarettes until December 31, 2001. Prohibits tobacco company opposition to state laws setting a minimum pack size of 20 cigarettes.

After December 31, 2001, tobacco companies may resume manufacturing and selling "kiddie packs" unless prohibited by state law.

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